

S2 - PRECEDENT CONTRACT FOR THE PURCHASE OF SERVICES

SECTION A

This Contract is dated [] 2018.

Parties

- (1) **UK Research and Innovation (UKRI)** Polaris House, North Star Avenue, Swindon SN2 1FF (**The Contracting Authority**).
- (2) **[Enter Supplier Name]**, [a company incorporated and registered in [COUNTRY] with company number [NUMBER] and registered VAT number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]] [a partnership under the laws of [COUNTRY] whose address is [ADDRESS]] [a business with its trading address at [ADDRESS]] (**the Supplier**).

Background

The Contracting Authority wishes the Supplier to supply, and the Supplier wishes to supply, the Services (as defined below) in accordance with the terms of the Contract (as defined below).

A1 Interpretation

A1-1 **Definitions.** In the Contract (as defined below), the following definitions apply:

Agent: Where UK Shared Business Services is not the named Contracting Authority is Parties (1), UK SBS has been nominated as agent on behalf of the Contracting Authority and therefore all communications both written and verbal will be received as issued by the Contracting Authority.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Contracting Authority for the supply of the Services in accordance with clause B4.

Commencement: the date and any specified time that the Contract starts

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause C7-11.

Confidential Information: any confidential information, knowhow and data (in any form or medium) which relates to UK SBS, the Contracting Authority or the Supplier, including information relating to the businesses of UK SBS, the Contracting Authority or the Supplier and information relating to their staff, finances, policies and procedures. This includes information identified as confidential in the Order or the Special Conditions (if any).

Contract Number:

Contract: the contract between the Contracting Authority and the Supplier for the supply of the Services, in accordance with these Conditions, any Special Conditions and the Order only.

Contracting Authority: UK Research & Innovation (UKRI), as specified at Section A (1) and any replacement or successor organisation.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

EIR: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Information: has the meaning given under section 84 of FOIA.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Contracting Authority's order for the Services, as set out in the Contracting Authority's completed purchase order form (including any Specification) which is in the format of the pro forma order form attached at Schedule 2. For the avoidance of doubt, if the Contracting Authority's purchase order form is not in the format of the pro forma order form at Schedule 2, it will not constitute an Order.

Public Body: any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

Request for Information: a request for Information or an apparent request under FOIA or EIR.

Scheme Effective Date: the date on which the United Kingdom Research and Innovation become a legal entity.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order.

Special Conditions: the special conditions (if any) set out in Schedule 1.

Specification: any specification for the Services, including any related plans and drawings that is supplied to the Supplier by the Contracting Authority, or produced by the Supplier and agreed in writing by the Contracting Authority.

Supplier or Suppliers: the parties to the contract as named in Section A (2).

Supplier's Associate: any individual or entity associated with the Supplier including, without limitation, the Supplier's subsidiary, affiliated or holding companies and any employees, agents or contractors of the Supplier and / or its subsidiary, affiliated or holding companies or any entity that provides services for or on behalf of the Supplier.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

UKRI: UK Research Council and Innovation will be established as a body corporate in accordance with the Higher Education and Research Act 2017. During the duration of this Contract it is possible that the transfer of title of the named Contracting Authority within section A (1) may be change to UKRI. If this is applicable then this would be managed in accordance with clause C7-3.

UK SBS: UK Shared Business Services Limited (a limited company registered in England and Wales with company number 06330639). Where UK SBS is not named as the Contracting Authority within section A (1), UK SBS will be acting as an agent on behalf of the Contracting Authority.

Working Day: any Business Day excluding 27, 28, 29, 30 and 31 December in any year.

A1-2 **Construction.** In the Contract, unless the context requires otherwise, the following rules apply:

A1-2-1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A1-2-2 A reference to a party includes its personal representatives, successors or permitted assigns.

A1-2-3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

A1-2-4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A1-2-5 The headings in these Conditions are for ease of reference only and do not affect the interpretation or construction of the Contract.

A1-2-6 A reference to **writing** or **written** includes faxes and e-mails.

A2 Basis of contract

A2-1 Where UK SBS is not the Contracting Authority, UK SBS is the agent of the Contracting Authority for the purpose of procurement and is authorised to negotiate and enter into contracts for the supply of services on behalf of the Contracting Authority. UK SBS will not itself be a party to, nor have any liability under, the Contract unless it is expressly specified as Contracting Authority in the Order.

- A2-2 The terms of this Contract, any Special Conditions and the Order apply to the Contract to the exclusion of all other terms and conditions, including any other terms that the Supplier seeks to impose or incorporate (whether in any quotation, confirmation of order, in correspondence or in any other context), or which are implied by trade, custom, practice or course of dealing.
- A2-3 If there is any conflict or inconsistency between the terms of this Contract, the Special Conditions (if any) and the Order (including any Specification), the terms of the Contract will prevail over the Special Conditions and the Special Conditions will prevail over the Order (including any Specification), in each case to the extent necessary to resolve that conflict or inconsistency.
- A2-4 The Order constitutes an offer by the Contracting Authority to purchase the Services in accordance with this Contract (and any Special Conditions). This offer shall remain valid for acceptance by the Supplier, in accordance with clause A2-5, for 28 days from the date of the Order. Notwithstanding that after 28 days the offer will have expired, the Contracting Authority may, at its discretion, nevertheless treat the offer as still valid and may elect to accept acceptance by the Supplier, in accordance with clause A2-5, as valid acceptance of the offer.
- A2-5 Subject to clause A2-4, the Order shall be deemed to be accepted on the date on which authorised representatives of both parties have signed a copy of this Contract, at which point the Contract shall come into existence. The Contract shall remain in force until all the parties' obligations have been performed in accordance with the Contract, at which point it shall expire, or until the Contract has been terminated in accordance with clause A3.

A3 Termination

- A3-1 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may terminate the Contract in whole or in part at any time before the Services are provided with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Contracting Authority shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed.
- A3-2 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- A3-2-1 the circumstances set out in clauses B2-1-1, C3 or C4-1 apply;
- A3-2-2 the Supplier breaches any term of the Contract and (if such breach is remediable) fails to remedy that breach within 10 working days of being notified in writing of the breach; or
- A3-2-3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

- A3-2-4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- A3-2-5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier; or
- A3-2-6 (being an individual) the Supplier is the subject of a bankruptcy petition or order; or
- A3-2-7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- A3-2-8 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier; or
- A3-2-9 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver; or
- A3-2-10 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets; or
- A3-2-11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause A3-2-3 to clause A3-2-10 inclusive; or
- A3-2-12 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- A3-2-13 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- A3-2-14 the Supplier's financial position deteriorates to such an extent that in the Contracting Authority's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- A3-3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.
- A3-4 Without prejudice to clause A3-3, clauses B1, B2, B5, B6, B7, B8, B9, C1, C2, C3, C4, C6 and C7 shall survive the termination or expiry of the Contract and shall continue in full force and effect.
- A3-5 Upon termination or expiry of the Contract, the Supplier shall immediately:
- A3-5-1 cease all work on the Contract;
- A3-5-2 Deliver to the Contracting Authority all Deliverables and all work-in-progress whether or not then complete. If the Supplier fails to do so, then the Contracting Authority may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

A3-5-3 cease use of and return (or, at the Contracting Authority's or UK SBS's acting as an agent on behalf of the Contracting Authority's election, destroy) all of the Contracting Authority's Materials in the Supplier's possession or control; and

A3-5-4 Cease all use of, and delete all copies of, UK SBS's or the Contracting Authority's or UK SBS's confidential information.

A3-6 **Termination**

The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may terminate the Contract by written notice to the Supplier in any of the following circumstances:

A3-6-1 Where it considers that the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 ("PCR 2015");

A3-6-2 Where it considers that the Supplier has at the time of the award of the Contract been in one of the situations referred to in Regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure;

A3-6-3 Where the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the EU Treaties and Directive 2014/24/EU of the European Parliament and of the Council that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;

A3-6-4 Where the European Commission sends a reasoned opinion to the United Kingdom or brings the matter before the Court of Justice of the European Union under Article 258 of the TFEU alleging that the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council; or

A3-6-5 Where a third party starts court proceedings against the Contracting Authority seeking a declaration that the Contract is ineffective or should be shortened under Regulations 98 to 101 of the PCR 2015, which the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority considers to have a reasonable prospect of success.

A3-6-6 Such termination shall be effective immediately or at such later date as is specified in the notice. The Contracting Authority shall not incur any liability to the Supplier by reason of such termination and shall not be required to pay any costs, losses or damage to the Supplier. Termination under this clause shall be without prejudice to any other rights of the Contracting Authority.

A3-7 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall at any time have the right for convenience to terminate the Contract or reduce the quantity of Services to be provided by the Supplier in each case by giving to the Supplier reasonable written notice. During the period of notice the Contracting Authority may direct the Supplier to perform all or any of the work under the Contract. Where the Contracting Authority has invoked either of these rights, the Supplier may claim reasonable costs necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit, provided that the claim shall not exceed the total cost of the Contract. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of

expenditure for any compensation claimed

SECTION B

B1 Supply of Services

- B1-1 The Supplier shall from the date set out in the Contract and until the end date specified in the Contract provide the Services to the Contracting Authority in accordance with the terms of the Contract.
- B1-2 The Supplier shall meet any performance dates for the Services (including the delivery of Deliverables) specified in the Order (including any Special Conditions and any applicable Specification) or notified to the Supplier by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.
- B1-3 In providing the Services, the Supplier shall:
- B1-3-1 co-operate with the Contracting Authority in all matters relating to the Services, and comply with all instructions of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority;
 - B1-3-2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade.
 - B1-3-3 use personnel who are suitably skilled, qualified and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - B1-3-4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Contract (including any Special Conditions and any applicable Specification), and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority;
 - B1-3-5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - B1-3-6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Contracting Authority, will be free from defects in workmanship, installation and design;
 - B1-3-7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - B1-3-8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Contracting Authority's premises; and
 - B1-3-9 Not do or omit to do anything which may cause the Contracting Authority to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Contracting Authority may rely or act on the Services.
- B1-4 The Contracting Authority's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of the Contracting Authority under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other applicable legislation as amended.
- B1-5 Without prejudice to the Contracting Authority's statutory rights, the Contracting

Authority will not be deemed to have accepted any Deliverables until the Contracting Authority has had at least 14 Working Days after delivery to inspect them and the Contracting Authority also has the right to reject any Deliverables as though they had not been accepted for 14 Working Days after any latent defect in the Deliverables has become apparent.

- B1-6 If, in connection with the supply of the Services, the Contracting Authority permits any employees or representatives of the Supplier to have access to any of the Contracting Authority's premises, the Supplier will ensure that, whilst on the Contracting Authority's premises, the Supplier's employees and representatives comply with:
- B1-6-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and
 - B1-6-2 any Contracting Authority policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Contracting Authority` laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Contracting Authority's premises by any employee or representative of the Contracting Authority's.
- B1-7 The Supplier warrants that the provision of Services shall not give rise to a transfer of any employees of the Supplier or any third party to the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority pursuant to TUPE.

B2 Contracting Authority Remedies

- B2-1 If the Supplier fails to perform the Services by the applicable dates, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall, without limiting its other rights or remedies, have one or more of the following rights:
- B2-1-1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - B2-1-2 to refuse to accept any subsequent performance of the Services (including delivery of Deliverables) which the Supplier attempts to make;
 - B2-1-3 to recover from the Supplier any costs incurred by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority in obtaining substitute services from a third party;
 - B2-1-4 where the Contracting Authority has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
 - B2-1-5 To claim damages for any additional costs, loss or expenses incurred by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority which are in any way attributable to the Supplier's failure to meet such dates.
- B2-2 Not Used
- B2-3 These Conditions shall extend to any substituted or remedial services provided by the Supplier.
- B2-4 The Contracting Authority's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

B3 Contracting Authority Obligations

B3-1 The Contracting Authority shall:

B3-1-1 provide the Supplier with reasonable access at reasonable times to the Contracting Authority's premises for the purpose of providing the Services; and

B3-1-2 Provide such information to the Supplier as the Supplier may reasonably request and the Contracting Authority considers reasonably necessary for the purpose of providing the Services.

B4 Finances, Charges and Payment

B4-1 The Supplier will directly manage the traded account and make available accounting information upon reasonable request of the Contracting Authority. Financial management reports and trading accounting detail will be routinely provided at the end of each quarter, providing actuals and forecasts. Additional or more regular requests made by the Client from time to time, will be reasonably responded to by the Supplier.

B4-2 The Charges for the Services are represented as per the agreed Management Fee as stated in the Suppliers winning tender, which can be deducted from the traded account following agreement from the Contracting Authority.

B4-3 The arrangement should provide for a true open book with full transparency on income and expenditure. Where a surplus is made at fiscal year-end, this will be apportioned 80/20% respectively between the Contracting Authority and the Supplier. The Supplier will only benefit from this profit share if all KPIs are evidenced and fully met.

B4-4 Similarly any deficit at the fiscal year end will be apportioned 80/20% respectively between the Contracting Authority and the Supplier.

B4-5 At the end of the fiscal year, the mechanism for fulfilling and repatriating traded surpluses or deficits, in line with B4-2 - B4-3, will be authorised and notified by the Contracting Authority. Authorised deductions will then be applied to the trading account, or payments will be reimbursed to the Contracting Authority by cheque or BACS payment within 30 days.

B4-6 The Charges for the Services shall be set out in the agreed Management Fee, which represents the full and exclusive remuneration of the Supplier in respect of the performance of the Services.

B4-7 Audit of accounts

B4-8 The Contracting Authority will reimburse the Supplier at cost for other expenses incurred in providing the Services to the Contracting Authority provided that the

Contracting Authority's prior written approval is obtained before incurring any such expenses, that all invoices for such expenses are accompanied by valid receipts and provided that the Supplier complies at all times with Contracting Authority's expenses policy from time to time in force.

- B4-9 The Supplier shall invoice the Contracting Authority on completion of the Services. Each invoice shall include such supporting information required by the Contracting Authority to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- B4-10 Not Used
- B4-11 All amounts payable by the Contracting Authority under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Contracting Authority, the Contracting Authority shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- B4-12 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority to inspect such records at all reasonable times on request.
- B4-13 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Contracting Authority in order to justify withholding payment of any such amount in whole or in part. The Contracting Authority may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
- B4-14 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within 30 days of receipt of the invoice.
- B4-15 Payment to Other Parties

The Supplier shall ensure, pursuant to Regulation 113(2)(c) of the Public Contracts Regulations 2015, that any subcontract awarded by the Supplier contains suitable provisions to impose, as between the parties to the subcontract, requirements that :

- B4-15-1 any payment due from the Supplier to the subcontract or under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- B4-15-2 any invoices for payment submitted by the subcontract or are considered and verified by the Supplier in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed;
; and
- B4-15-3 any subcontract or will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs B4-10-1, B4-10-2 and B4-10-3 of this Clause B4-10, subject to suitable amendment to reflect the identities of the relevant parties.

B5 Contracting Authority Property

B5-1 The Supplier acknowledges that all information (including confidential information), equipment and tools, drawings, specifications, data, software and any other materials supplied by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority to the Supplier (**Contracting Authority's Materials**) and all rights in the Contracting Authority's Materials are and shall remain at all times the exclusive property of the Contracting Authority and UK SBS (as appropriate). The Supplier shall keep the Contracting Authority's Materials in safe custody at its own risk, maintain them in good condition until returned to the Contracting Authority or UK SBS, and not dispose or use the same other than for the sole purpose of performing the Supplier's obligations under the Contract and in accordance with written instructions or authorisation from the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.

B6 Intellectual Property Rights

- B6-1 In respect of any goods that are transferred to the Contracting Authority under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Contracting Authority, it will have full and unrestricted rights to transfer all such items to the Contracting Authority.
- B6-2 Save as otherwise provided in the Special Conditions, the Supplier assigns to the Contracting Authority, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. Where those products or Deliverables incorporate any Intellectual Property Rights owned by or licensed to the Supplier which are not assigned under this clause, the Supplier grants to the Contracting Authority a worldwide, irrevocable, royalty-free, transferable licence, with the right to grant sub-licences, under those Intellectual Property Rights to maintain, repair, adapt, copy and use those products and Deliverables for any purpose.
- B6-3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- B6-4 The Supplier shall, promptly at the request of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may from time to time require for the purpose of securing for the Contracting Authority the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Contracting Authority in accordance with clause B6-2.

B7 Indemnity

B7-1 The Supplier shall indemnify, and shall keep indemnified the Contracting Authority and UK SBS acting as an agent on behalf of the Contracting Authority, in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority as a result of or in connection with:

B7-1-1 any claim made against the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

B7-1-2 any claim brought against the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services; and

B7-1-3 Any claim whether in tort, contract, statutory or otherwise, demands, actions, proceedings and any awards arising from a breach by the Supplier of clause B1-7 of these Conditions.

B7-2 This clause B7 shall survive termination or expiry of the Contract.

B8 Insurance

B8-1 During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

B8-1-1 professional insurance for not less than £5 million per claim;

B8-1-2 public liability insurance for not less than £5 million per claim (unlimited claims); and

B8-1-3 employer liability insurance for not less than £5 million per claim (unlimited claims); and

B8-1-4 Not used

B8-1-5 The Supplier shall ensure that the Contracting Authority's interest is noted on each insurance policy, or that a generic interest clause has been included.

B8-2 On request from the Contracting Authority's or UK SBS acting as an agent on behalf of the Contracting Authority, the Supplier shall provide the Contracting Authority or UK SBS with copies of the insurance policy certificates and details of the cover provided.

B8-3 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the Contract which they are contracted to fulfil.

B8-4 The Supplier shall:

B8-4-1 do nothing to invalidate any insurance policy or to prejudice the Contracting Authority's entitlement under it; and

B8-4-2 Notify the Contracting Authority if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

B8-5 The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause B8-1.

B8-6 If the Supplier fails or is unable to maintain insurance in accordance with clause B8-

1, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

B9 Liability

- B9-1 In this clause B9, a reference to the Contracting Authority or UK SBS's liability for something is a reference to any liability whatsoever which the Contracting Authority or UK SBS might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Contracting Authority's or UK SBS's negligence or from negligence for which the Contracting Authority's or UK SBS would otherwise be liable.
- B9-2 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority is not in breach of the Contract, and neither the Contracting Authority nor UK SBS has any liability for anything, to the extent that the apparent breach or liability is attributable to the Supplier's breach of the Contract.
- B9-3 Subject to clause B9-6, neither the Contracting Authority nor UK SBS acting as agent on behalf of the Contracting Authority shall have any liability for:
- B9-3-1 any indirect or consequential loss or damage;
 - B9-3-2 any loss of business, rent, profit or anticipated savings;
 - B9-3-3 any damage to goodwill or reputation;
 - B9-3-4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Contracting Authority's premises by or on behalf of the Supplier; or
 - B9-3-5 Any loss, damage, costs or expenses suffered or incurred by any third party.
- B9-4 Subject to clause B9-6, the Contracting Authority and UK SBS's total liability shall be limited to the Charges.
- B9-5 Subject to clause B9-6, the Supplier's total liability in connection with the Contract shall be limited to £5,000,000
- B9-6 Nothing in the Contract restricts either the Contracting Authority, UK SBS or the Supplier's liability for:
- B9-6-1 death or personal injury resulting from its negligence; or
 - B9-6-2 its fraud (including fraudulent misrepresentation); or
 - B9-6-3 Breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

SECTION C

C1 Confidential Information

C1-1 A party who receives Confidential Information shall keep in strict confidence (both during the term of the Contract and after its expiry or termination) all Confidential Information which is disclosed to it. That party shall only disclose such Confidential Information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging that party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep all such information confidential in accordance with this clause C1. Neither party shall, without the prior written consent of the other party, disclose to any third party any Confidential Information, unless the information:

C1-1-1 was public knowledge or already known to that party at the time of disclosure; or

C1-1-2 subsequently becomes public knowledge other than by breach of the Contract; or

C1-1-3 subsequently comes lawfully into the possession of that party from a third party; or

C1-1-4 Is agreed by the parties not to be confidential or to be disclosable.

C1-2 To the extent necessary to implement the provisions of the Contract (but not further or otherwise), either party may disclose the Confidential Information to any relevant governmental or other authority or regulatory body, provided that before any such disclosure that party shall make those persons aware of its obligations of confidentiality under the Contract and shall use reasonable endeavours to obtain a binding undertaking as to confidentiality from all such persons.

C1-3 All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by a party from the other party shall be returned promptly to the other party (or, at the election of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, destroyed promptly) on expiry or termination of the Contract, and no copies shall be kept.

C2 Transparency

C2-1 The Supplier acknowledges that the United Kingdom Government's transparency agenda requires that contracts, such as the Contract, and any sourcing document, such as the invitation to sourcing, are published on a designated, publicly searchable website.

C2-2 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. The Contracting Authority and or UK SBS acting as an agent on behalf of the Contracting Authority shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.

C2-3 Notwithstanding any other term of the Contract, the Supplier hereby consents to the Contracting Authority and or UK SBS acting as an agent on behalf of the Contracting Authority publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

C2 Transparency

C2-1 In order to comply with the Government's policy on transparency in the areas of procurement and contracts the Supplier agrees that the Contract and the sourcing documents issued by UK SBS which led to its creation will be published by UK SBS on a designated web site.

C2-2 The entire Contract and all the sourcing documents issued by UK SBS will be published on the designated web site save where to do so would disclose information the disclosure of which would:

C2-2-1 contravene a binding confidentiality undertaking that protects information which the UK SBS, at the time when it considers disclosure, reasonably considers to be confidential to Supplier;

C2-2-2 be contrary to regulation 21 of the Public Contracts Regulations 2015; or

C2-2-3 if the reasonable opinion of UK SBS is prevented by virtue of one or more of the exemptions in the Freedom of Information Act (FOIA) or one or more of the exceptions in the Environmental Information Regulation (EIR).

If any of the situations in C2-2-1, C2-2-2, C2-2-3 apply the Supplier consents to the Contract or sourcing documents being redacted by UK SBS to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions

In this entire clause the expression "sourcing documents" means the advertisement issued by UK SBS seeking expressions of interest, any pre-qualification questionnaire stage and the invitation to tender.

C3 Force Majeure

C3-1 If any event or circumstance that is beyond the reasonable control of the Supplier, and which by its nature could not have been foreseen by the Supplier or, if it could have been foreseen, was unavoidable, (provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract) prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 10 Business Days, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may terminate this Contract immediately by giving written notice to the Supplier

C4 Corruption

C4-1 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Associate:

C4-1-1 offers or agrees to give any person working for or engaged by the Contracting Authority, UK SBS or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and Contracting Authority, or UK SBS or any Public Body, including its award to the Supplier or a Supplier's Associate and any of the rights and obligations contained within it;

C4-1-2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Contracting Authority, or UK SBS or any Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Contracting Authority, or UK SBS before the Contract is entered into;

C4-1-3 breaches the provisions of the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010; or

C4-1-4 Gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

C4-2 For the purposes of clause C4-1, "loss" shall include, but shall not be limited to:

C4-2-1 The Contracting Authority's or UK SBS's costs in finding a replacement supplier;

C4-2-2 direct, indirect and consequential losses; and

C4-2-3 Any loss suffered by the Contracting Authority or UK SBS as a result of a delay in its receipt of the Goods.

C5 Data Protection

C5-1 The Supplier shall comply at all times with all data protection legislation applicable in the UK from time to time.

C5-2 General Data Protection Regulations (GDPR)

The Supplier warrants that that it shall under this Contract :

The Supplier is to ensure that this Contract from its Commencement shall be performed in such a way so as to be compliant with any existing Data Protection Act and will meet the requirements of the GDPR. The supplier is to ensure that they are fully compliant with GDPR as far as required by law and the Early Years Foundation Stage Statutory Framework. This includes any agreements between the Supplier and parents.

C6 Freedom of Information

C6-1 The Supplier acknowledges that the Contracting Authority and or UK SBS may be subject to the requirements of FOIA and EIR and shall assist and co-operate with the Contracting Authority and or UK SBS to enable them to comply with its obligations under FOIA and EIR.

C6-2 The Supplier shall and shall procure that its employees, agents, sub-contractors and any other representatives shall provide all necessary assistance as reasonably requested by the Contracting Authority or UK SBS to enable the Contracting Authority or UK SBS to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

C6-3 The Contracting Authority and or UK SBS acting as an agent on behalf of the Contracting Authority shall be responsible for determining (in its absolute discretion) whether any Information:

C6-3-1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;

C6-3-2 is to be disclosed in response to a Request for Information,

And in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.

C6-4 The Supplier acknowledges that the Contracting Authority and or UK SBS may be obliged under the FOIA or EIR to disclose Information, in some cases even where that Information is commercially sensitive:

C6-4-1 without consulting with the Supplier, or

C6-4-2 Following consultation with the Supplier and having taken its views into account.

C6-5 Where clause C6-4-2 applies the Contracting Authority and or UK SBS shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.

C6-6 Where the Supplier organisation is subject to the requirements of the FOIA and EIR, C6-7 will supersede C6-2 – C6-5. Where the Supplier organisation is not subject to the requirements of the FOIA and EIR, C6-7 will not apply.

C6-7 The Contracting Authority and UK SBS acknowledge that the Supplier may be subject to the requirements of the FOIA and EIR and shall assist and co-operate with the Supplier to enable them to comply with its obligations under the FOIA and EIR.

C7 General

C7-1 Entire Agreement

C7-1-1 The Contract constitutes the entire agreement between the Contracting Authority and the Supplier in relation to the supply of the Services and the Contract supersedes any earlier agreements, arrangements and understandings relating to that subject matter.

C7-2 Liability

C7-2-1 Where the Contracting Authority is more than one person, the liability of each such person for their respective obligations and liabilities under the Contract shall be several and shall extend only to any loss or damage arising out of each such person's own breaches.

C7-2-2 Where the Contracting Authority is more than one person and more than one of such persons is liable for the same obligation or liability, liability for the total sum recoverable will be attributed to the relevant persons in proportion to the price payable by each of them under the Contract.

C7-3 Assignment and Subcontracting

C7-3-1 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

C7-3-2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without prior written consent from the Contracting Authority's or UK SBS acting as an agent on behalf of the Contracting Authority.

C7-3-3 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may (without cost to or liability of the Contracting Authority or UK SBS) require the Supplier to replace any subcontractor where in the reasonable opinion of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015 apply to the subcontractors.

C7-4 Further Assurance

C7-4-1 The Supplier will promptly at the request of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority do (or procure to be done) all such further acts and things, including the execution of all such other documents, as either the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may from time to time require for the purpose of securing for the Contracting Authority the full benefit of the Contract, including ensuring that all title in the Goods is transferred absolutely to the Contracting Authority.

C7-5 Publicity

C7-5-1 The Supplier shall not make any press announcements or publicise this Contract in any way without prior written consent from the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.

C7-5-2 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall be entitled to publicise this Contract in accordance with any legal obligation upon Contracting Authority or UK SBS, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

C7-5-3 The Supplier shall not do anything or cause anything to be done, which may damage the reputation of the Contracting Authority or UK SBS or bring the Contracting Authority or UK SBS into disrepute.

C7-6 Notices

C7-6-1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to:

C7-6-1-a in the case of the Contracting Authority: **Vikki Gledhill Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1FF**; Email: procurement@stfc.ac.uk (and a copy of such notice or communication shall be sent to: **Kerry Hammond, Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1FF**; Email: professionalservices@uksbs.co.uk and the Chief Procurement Officer, Polaris House, North Star Avenue, Swindon,

Wiltshire SN2 1FF);

C7-6-1-b in the case of the Supplier: the address, fax number and email address set out in the Order, or any other address, fax number or email address which that party may have specified to the other party in writing in accordance with this clause C7-6, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

C7-6-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C7-6-1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail between the hours of 9.00am and 5.00pm on a Working Day, upon successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number), or if sent by fax or e-mail outside the hours of 9.00am and 5.00pm on a Working Day, at 9.00am on the next Working Day following successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number).

C7-6-3 This clause C7-6-3 shall only apply where UK SBS is not the Contracting Authority. In such cases, UK SBS may give or receive any notice under the Contract on behalf of the Contracting Authority and any notice given or received by UK SBS will be deemed to have been given or received by the Contracting Authority.

C7-6-4 Except for clause C7-6-5, the provisions of this clause C7-6 shall not apply to the service of any proceedings or other documents in any legal action.

C7-6-5 [The Supplier irrevocably appoints and authorises [NAME] of [ADDRESS] (or such other person, being a firm of [solicitors] resident in England, as the Supplier may by notice substitute) to accept service on behalf of the Supplier of all legal process, and service on [NAME] (or any such substitute) shall be deemed to be service on the Supplier.]

C7-7 Severance

C7-7-1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

C7-7-2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

C7-8 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the

further exercise of that or any other right or remedy.

- C7-9 **No Partnership, Employment or Agency.** Nothing in the Contract creates any partnership or joint venture, nor any relationship of employment, between the Supplier and either the Contracting Authority or UK SBS. Nothing in the Contract creates any agency between the Supplier and either the Contracting Authority or UK SBS.
- C7-10 **Third Party Rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it, except that UK SBS and any member of the UK SBS, Associated Bodies or Authorised Entities that derives benefit under this Contract may directly enforce or rely on any terms of this Contract.
- C7-11 **Variation.** Any variation to the Contract, including any changes to the Services, these Conditions, the Special Conditions or the Order, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority and the Supplier.
- C7-12 **Governing Law and Jurisdiction.**
- C7-12-1 Subject to clause C7-12-2, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- C7-12-2 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall be free to enforce its intellectual property rights in any jurisdiction.
- C7-13 **Modern Slavery Act 2015**
- C7-13-1 During the Term or any extension of the Contract, the Contracting Authority is committed to ensuring that its supply chain complies with the above Act. The Supplier shall provide such assurances, on the anniversary of the Commencement date or completion of the Contract, if less than 12 months.
- C7-13-2 The Supplier shall provide a report covering the following but not limited to areas as relevant and proportionate to the Contract evidencing the actions taken, relevant to the Supplier and their supply chain associated with the Contract.
- C7-13-2-a Impact assessments undertaken
- C7-13-2-b Steps taken to address risk/actual instances of modern slavery and how actions have been prioritised
- C7-13-2-c Evidence of stakeholder engagement
- C7-13-2-d Evidence of ongoing awareness training
- C7-13-2-e Business-level grievance mechanisms in place to address modern slavery
- C7-13-2-f Actions taken to embed respect for human rights and zero tolerance of modern slavery throughout the organisation

C7-13-3 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority reserves the sole right to audit any and all reports submitted by the Supplier to an extent as deemed necessary and the Supplier shall unreservedly assist the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority in doing so. Any financial burden incurred by the Supplier in doing so shall not be reimbursable.

C7-14 Changes in Costs Resulting from Changes to Government Legislation, Levies or Statutory Payments

The Contracting Authority will reimburse during any term or extension (or, where such costs, awards or damages arise following termination/expiry) of this Agreement, any increases in the Supplier's cost of providing the Services by reason of any modification or alteration to the Government legislation duties or levies or other statutory payments (including but not limited to National Insurance and/or VAT and/or introduction of or amendment to working time minimum wages). Subject always to open book access to the Supplier's records and always after a period of due diligence carried out by the Contracting Authority, relevant and proportionate to the value concerned.

C7-15 Taxation Obligations of the Supplier

C7-15-1 The relationship between the Contracting Authority, UK SBS and the Supplier will be that of "independent contractor" which means that the Supplier is not an employee, worker, agent or partner of the Contracting Authority or UK SBS and the Supplier will not give the impression that they are.

(1.) The Supplier in respect of consideration shall at all times comply with the income tax Earnings and Pensions Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

(2.) Where Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

(3.) The Contracting Authority may, at any time during the term, completion extension or post termination of this contract, request (Supplier) to provide information which demonstrates how Supplier complies with its obligations under tax and National Insurance Clauses (1) and (2) above or why those clauses do not apply to it.

C7-15-2 As this is not an employment Contract the Supplier will be fully responsible for all their own tax including any national insurance contributions arising from carrying out the Services.

C7-15-3 A request under Clause (3) above may specify the information which Supplier shall provide and the period within which that information must be provided.

C7-15-4 In the case of a request mentioned in Clause (3) above, the provision of inadequate information or a failure to provide the information within the requested period, during any term or extension, may result in the Contracting Authority terminating the contract.

C7-15-5 Any obligation by Supplier to comply with Clause (1) and (2) shall survive any extension, completion or termination and Supplier obligations to Indemnify the Contracting Authority shall survive without limitation and until such time as any of these obligations are complied with.

C7-15-6 The Contracting Authority may supply any information, including which it receives under clause (3) to the commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

C7-15-7 If the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority has to pay any such tax under clauses (1) and (2) then the Supplier will pay back to the Contracting Authority or UK SBS in full, any money that the Contracting Authority or UK SBS has to pay, and they will also pay back the Contracting Authority or UK SBS for any fine or other punishment imposed on the Contracting Authority or UK SBS because the tax or national insurance was not paid by the Supplier.

C7-16 **Cyber Essentials Questionnaire**

The supplier agrees that during any term or extension at the sole discretion of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, to complete the attached questionnaire as many times as is required within 14 days from notice, and shall send this information as directed by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority. The Contracting Authority and UK SBS acting as an agent on behalf of the Contracting Authority is required to provide such assurances to comply with government legislation. Any financial burden associated with the completion and submission of this questionnaire shall be at the suppliers cost and will not be reimbursable.



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SECTION D

D1.1 The Supplier and the Contracting Authority will co-operate with each other to effect a smooth transfer of staff engaged or to be engaged in the provision of the Services and working at the Premises under any Agreement of employment, other employment relationship or collective Contract ("Transferring Employees") so that their employment transfers.

D1.2 at the Commencement Date, to the Supplier; and

D1.3 at expiry or termination of this Agreement, to the Contracting Authority or to any other person, organisation or company nominated by the Contracting Authority.

D1.4 The Supplier will indemnify the Contracting Authority and hold the Contracting Authority harmless against all costs, liabilities and expenses (including reasonable legal fees) ("Claims") which the Contracting Authority may incur pursuant to the provisions of TUPE relating to or arising out of any act or omission by the Supplier during the term of this Agreement in relation to any of its employees providing Services to the Contracting Authority under this Agreement.

D1.5 The Supplier operates an equal opportunities policy for staff and the Contracting Authority will ensure that if any of its own staff act contrary to that policy, then the Contracting Authority will treat any discrimination or other dispute thereby arising in line with recognised procedures for such matters.

D1.6 The Supplier shall inform the Contracting Authority whenever the manager or other supervisory grade are replaced at the Premises and to provide the name and details of the experience of their successor. All other staff changes whether additions or reductions to be informed to the Contracting Authority within 5 days

Schedule 1 Special Conditions

1. Safeguarding

1.1 The Supplier shall have a fully adopted and regularly reviewed Safeguarding Policy applicable to the Nursery Setting. The Policy shall comply with the latest EYFS and Ofsted requirements.

1.2 The Supplier shall ensure that everyone in the organisation understands and complies with the safeguarding processes and how to report concerns/incidents. This is monitored via supervision, appraisal, training and observation.

1.3 The Supplier shall identify a Lead Designated Safeguarding Lead and appropriately trained Deputy who shall at all times be fully up to date with the most current Ofsted and EYFS requirements and be available during operational opening times to discuss any safeguarding concerns and issues. This role must also be aware and linked in to the Local Authority Safeguarding training compliance requirements and policies.

1.4 The Supplier must train all staff to understand their safeguarding policy and procedures, and ensure that all staff have up to date knowledge of safeguarding issues. There must be evidence of training at induction followed by regular refreshers and annual updates

1.5 The supplier should ensure and demonstrate a culture of openness and transparency with regards to safeguarding and all Staff are aware of their responsibilities. The supplier must demonstrate a clear organisational learning from safeguarding, including amendments to risk assessments and care plans.

1.6 The supplier must ensure there is a system for monitoring safeguarding and tracking alerts and investigations.

1.7 The Supplier shall ensure and conduct rigorous recruitment processes and compliance with the Safeguarding Vulnerable Groups Act 2006. The Supplier must have regard to the government's statutory guidance 'Working Together to Safeguard Children 2015' and to the 'Prevent duty guidance for England and Wales 2015.

1.8 The Supplier will ensure that all new members of Staff have received a DBS Enhanced and shall comply and demonstrate that the requirements and best practice relating to DBS checks and updates set out in the EYFS and Ofsted are met.

1.9 Inform RAL quarterly of these as well as refresher training. No staff to be employed without active DBS or PFA. Evidence of safeguarding training and refresher training in line with 'Working Together to Safeguard Children' required on a quarterly basis as part of the reporting. The Contracting Authority or their Agent reserve the right to request this information at short notice.

2.0 The Supplier will ensure that all Staff are aware of "whistleblowing" procedures and are aware of legal safeguards in accordance with the Public Interest Disclosure Act 2003 (www.pcaaw.co.uk).

2. Termination

In these instances, the Contracting Authority reserves the right to give notice to terminate if at the Ofsted Inspection, the Supplier fails to secure a 'Grade 2: good' as a minimum judgement, or as set out below.

Reason	Action	If no improvement
Grade 2 Good	No action	
Grade 3 Requires Improvement	Supplier to deliver a performance improvement plan in line with Education Act 2005, Section 5, Inspection Framework. If upon Ofsted re-inspection the rating has improved and is secured at Grade 2 or above, then no further action to be taken. The Supplier is required to share all communication, action and improvement plans with the Contracting Authority.	If upon Ofsted reinspection, the grade remains 3 or below the Contracting Authority reserves the right to terminate the contract.
Grade 4 Inadequate	Where Ofsted judges the overall effectiveness to be inadequate, the inspection report will set out the steps the Supplier must take and the date by which these must be complied and met.	The Contracting Authority reserves the right to serve notice of termination in this instance and will consider the circumstances and issues in relation to the inspection report and whether Special Measures have been reported. If Ofsted decides to take enforcement action of any type, this will lead to the right to termination by the Contracting Authority.
Safeguarding failure	If there is a serious breach of health & safety or safeguarding activity or any of the aforementioned clauses that puts children at significant harm or risk, or impacts the welfare of children.	The Contracting Authority reserves the right to terminate
Supplier not meeting Ofsted registration requirements	If Ofsted cancels the Ofsted registration of the Little Stars Nursery.	The Contracting Authority reserves the right to terminate

3. Key Performance Indicators (KPI)

KPI Area	Contractual KPIs	If fully met	If not fully met
Ofsted rating	Secure Ofsted rating 'Outstanding' as a minimum	If met then this will support the share of the surplus as set out in the contract B4-3	See Section 2 on termination clauses if rating falls below 'good'
Quality, Learning and Development	<p>Evidence of rigorous monitoring of observations, assessment and planning that ensures all children make good progress and that Nursery Practitioners document what they have observed and are able to effectively capture the context that appears to be enabling or constraining children in the learning environment.</p> <p>Satisfactory review following STFC quality audits, carried out by internal or external persons, of how learning and development and good practice such as Learning Journeys or profiles help track individual learning and development. This may also include inspection of the Service Supplier's agendas and minutes.</p>	<p>If met then this will support the share of the surplus as set out in the contract B4-3</p> <p>If met then this will support the share of the surplus as set out in the contract B4-3</p>	Improvement plans required. Potential commitment and cost passed to the Supplier to resource professional inputs to develop as necessary in line with professional view / Ofsted audit recommendations.
Staff qualifications and training	<p>75% of staff shall be qualified to minimum of Level 2 or above. The Manager of the setting to hold a minimum of level 3. Two qualified first aiders at all times during operating hours.</p> <p>Access to staff within the wider organisation who are qualified to degree level.</p> <p>Access to direct staff or the organisation who are qualified early years teaching staff and visit</p>	If met then this will support the share of the surplus as set out in the contract B4-3	<p>Action plan required with timescales for improvements and addressing any shortfall with full explanations of why the level of qualifications are not secured.</p> <p>Full investigation of recruitment policies and</p>

	<p>Little Stars as a minimum each term (6 school terms).</p> <p>Provide quarterly updates on statutory and compliance related training.</p>		strategy.
Finance & Management Information	<p>Provision of quarterly profit and loss account detailing income and expenditure and providing forecasts meeting the timeline and communications plan which are to be agreed.</p> <p>To respond to financial queries within three working days.</p>	If met then this will support the share of the surplus as set out in the contract B4-3	Potential 5% deduction of management fee pro-rata (the number of days delayed by if this is not provided).
Staff turnover	To be lower than 15% per annum	If met then this will support the share of the surplus as set out in the contract B4-3	Full investigation of recruitment policies and strategy.
Allocations and waiting list	<p>To provide a quarterly update or as requested by STFC, the 'Families' occupation and the status of the waiting list and enquiries by Category type.</p> <p>To provide MI on allocations offered and accepted and declines of offers with reasons- to show FTEs and number of children and provide a full view of the waiting list (identity can be anonymised)</p>	If met then this will support the share of the surplus as set out in the contract B4-3	Potential 5% deduction of management fee pro-rata (the number of days delayed by if this is not provided).
Parental complaints	Nursery Manager will respond to all written complaints within 5 working days; as required, either through subsequent escalation or if complaints are considered serious and directed to the Senior Manager, to respond within 5 working days. To provide data reporting on a quarterly basis of all complaints, responses and resolutions.	If met then this will support the share of the surplus as set out in the contract B4-3	Potential 5% deduction of management fee pro-rata (the number of days delayed by if this is not provided).
Parental survey	Conduct annual survey – provide the questionnaire to STFC for review before releasing so there is opportunity to capture client	If met then this will support the share of the surplus as set out in the contract	Action plan required with timescales for improvements and

	<p>requirements.</p> <p>Provide analysis to STFC and parents</p> <p>Exceed 90% satisfaction level and create action plan to be reviewed quarterly</p>	B4-3	<p>addressing any shortfall with full explanations</p> <p>Full investigation of associated policies.</p>
Responses to STFC and active management of communication	To respond within 3 working days	If met then this will support the share of the surplus as set out in the contract B4-3	Potential 5% deduction of management fee pro-rata (the number of days delayed by if this is not provided.

4. Number Licence to occupy Premises

- Any land or Premises made available from time to time to the Supplier by the Contracting Authority in connection with the Agreement shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Agreement. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.
- The Supplier shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Agreement and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Contracting Authority may reasonably request
- Should the Supplier require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Contracting Authority (s) at the Supplier's expense, unless agreed otherwise.
- The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Contracting Authority, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- The Parties agree that there is no intention on the part of the Contracting Authority to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Contracting Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

5. Property

Where the Contracting Authority issues Property free of charge to the supplier such Property shall be and remain the property of the Contracting Authority and the Supplier irrevocably licences the Contracting Authority and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Contracting Authority. The Supplier shall take all reasonable steps to ensure that the title of the Contracting Authority to the Property and the exclusion of any such line or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Contracting Body's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Contracting Body.

- The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Contracting Authority. otherwise within 5 Working Days of receipt
- The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Agreement and for no other purpose without prior Approval.
- The Supplier shall ensure the security of all the Property whilst In Us possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Contracting Authority reasonable security requirements as required from time to time.
- The Supplier shall be liable for all loss of or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Customer(s)' Default. The Supplier shall Inform the Contracting Authority within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

6. Records and Audit Access

- The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it and the amounts paid by the Contracting Body.
- The Supplier shall keep the records and accounts referred to in Clause above in accordance with good accountancy practice and shall ensure they are audited by qualified auditors, or otherwise independently assessed as agreed between the Contracting Authority and the Supplier at least once a year during the Term.
- The Supplier shall on request afford the Contracting Authority representatives and/or their auditors such access to such records and accounts as may be required by the Contracting Authority from time to time.
- The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term to the Contracting Authority and its internal and external auditors on reasonable written notice.

- The Contracting Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- Subject to the Contracting Authority rights of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including without limitation:-
 - all information requested by the Contracting Authority within the scope of the Audit;
 - reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services;
 - access to the Staff.
- The Contracting Authority shall endeavour but is not obliged to provide at least fifteen (15) Working Days' notice of its intention to conduct an Audit.
- The Parties agree that each party shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Contracting Authority for the Contracting Authority reasonable costs incurred in relation to the Audit.

7. Variations to the Agreement

The Agreement may not be varied substantially except where:-

- the Contracting Authority notifies the Supplier that it wishes to vary the terms of this Agreement and provides the Supplier with full written details of any such proposed change; and
- the named officers of the Contracting Authority and the Supplier as set out In Clause C7-6 (Notices) agree to the variation in writing and a written Agreement is signed by such named officers.

8. Complaints Handling and Resolution

- Without prejudice to any rights and remedies that the Contracting Authority may have at law, including under the Agreement and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Agreement, the Supplier shall use all reasonable endeavours to resolve the Complaint and in so doing, shall deal with the complaint fully, expeditiously and fairly.
- Within three (3) Working Days of a request by the Contracting Authority, the Supplier shall provide full details of a Complaint to the Contracting Authority, Including details of steps taken to its resolution.

9. Dispute Resolution

- Save where there is a statutory process with mandatory application for the resolution of a specific type of dispute between the Parties, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or In connection with the Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such effort shall involve the escalation of the dispute to the Chief Procurement Officer (or equivalent) of each Party.
- Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any ad or compelling the other Party to do any ad.
- If the dispute cannot be resolved by the Parties pursuant to Clause above the Parties shall refer it to mediation pursuant to the procedure set out in Clause unless (a) the Contracting Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.
- The obligations of the Parties under the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirement of the Agreement at all times.

The procedure for mediation and consequential provisions relating to mediation are as follows:-

- a neutral adviser or mediator ("the Mediator") shall be chosen by Agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a Mediator.
- The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him In order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution (CEDR) to provide guidance on a suitable procedure.
- Unless otherwise agreed, all negotiations connected with the dispute and any settlement Agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- If the Parties reach Agreement on the resolution of the dispute, the Agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- Failing Agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties. If the Parties fail to reach Agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courte.

Schedule 2 Pro forma purchase order form

N/A

For and on behalf of
(The Supplier)

Signed

Name

Position

Date

For and on behalf of UK Research and
Innovation (UKRI)
(The Contracting Authority)

Signed

Name

Position

Date

THIS IS THE LAST PAGE OF THESE TERMS & CONDITIONS